IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 2 of 1998

WITH

COMPANY APPLICATION No 292 of 1998
COMPANY PETITION No 65 of 1998
COMPANY PETITION No 210 of 1998
COMPANY PETITION No 09 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BOARD OPINION

Versus

NANIKRAM SOBHRAJ MILLS LTD.

Appearance:

1. COMPANY PETITION No. 2 of 1998
BOARD OPINION for Petitioner No. 1
MR DS VASAVADA for Respondent No. 1
MR RD DAVE for Respondent No. 1
NOTICE SERVED for Respondent No. 2,5-7
..... for Respondent No. 3
MR PRANAV G DESAI for Respondent No. 4

2. COMPANY APPLICATION No. 292 of 1998

MR MIHIR H. JOSHI WITH MR PAVAN GODIAWALA for the Applicant.

MR R.M. DESAI, MR. D.S. VASAVADA AND MR PRANAV G. DESAI, MR. R.D. DAVE for Respondents.

3. COMPANY PETITION No. 65 of 1998

MR A.R. MAJMUDAR & MS. DESAI for the Petitioners.

4. COMPANY PETITION No. 210 of 1998

MR ASHWIN L. SHAH for the Petitioner.

5. COMPANY PETITION No. 09 of 1999

MR. A.C. GANDHI for the Petitioner.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 12/08/2004

COMMON CAV JUDGEMENT

Since all these petitions and application are in relation to the same Company, namely, Nanikram Sobhraj Mills Limited and since the prayer in all these Company Petitions is for winding up of the respondent Company and the prayer in Company Application is for sanction of the revival scheme of the respondent Company, all these matters are being disposed of by this common judgment and order.

2. Company Petition No. 2 of 1998 is registered on the strength of the opinion of the Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR for short) received by this Court from the Registrar of BIFR dated 31.12.1997 along with the opinion of the BIFR of even date. The order passed by the BIFR dated 31.12.1997 was carried further in Appeal by the Mills Company as well as by the President of Kamdar Ladat Samiti of the respondent Company being Appeal Nos. 28 of 1998 and 68 of 1998 respectively. Both these appeals were disposed of by the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as 'AAIFR' for short) on 21.07.1998 confirming the order passed by the BIFR.

3. Company Application No. 292 of 1998 is filed by Kamdar Ladat Samiti requesting this Court not to order winding-up of the Mills Company on the basis of the order of BIFR dated 31.12.1997 in Reference No. 24 of 1996 and

to stay further proceedings pursuant to the said order of BIFR. It is also prayed in this application to consider and approve the scheme of revival as proposed by Kamdar Ladat Samiti in respect of the Mills Company produced at Annexure B to the application and to direct the erstwhile operating agency to consider the same and place its analysis and report before this Court for further direction.

4. It is worthwhile to mention here that Kamdar Ladat Samiti has also filed S.C.A. No. 10307 of 1998 simultaneously before this Court making similar prayers as are made in Company Application No. 292 of 1998 and the said petition is recently decided by this Court (Coram :- D.A. Mehta, J.) on 17.06.2004 confirming the orders passed by BIFR and AAIFR.

5. Company Petition No. 65 of 1998 is filed by the landlords whose properties comprising of land and building bearing Final Plot No. 101 of T.P. Scheme No. 16 situated at M.R. Colony, Saraspur, Ahmedabad which were letout to the Mills Company for the purpose of business of the said Company. Since the arrears of rent were outstanding and since the Company had stopped its business activities and closed down the premises, the present petition was filed for winding up of the respondent Company and seeking possession back of their premises from the Mills Company.

6. Company Petition No. 210 of 1998 is filed for winding up of the respondent Company as the Company has failed to pay an aggregate amount of Rs. 29.81,720/to the petitioner on the date of filing of the petition, consisting of Rs. 14,76,520/- being the amount of the arrears of rent, Rs. 8,15,508/- being the amount of compensation for failure to pay rent in time, Rs. 5,79,320/- being the amount of the unmatured lease rent, Rs. 77,376/- being the amount of the residual value, Rs. 30,000/- being the legal charges and Rs. 3,000/- being the other misc. expenses.

7. Company Petition No. 9 of 1999 is filed for winding up of the respondent Company as the Company has failed to pay an amount of Rs. 17,65,085/- as on 15.06.1998 which inter alia includes the interest upto that date on the principal amount of Rs. 10,40,890/-.

8. All the above referred petitions as well as application were ordered to be heard along with Company Petition No. 2 of 1998. Uptill now all these matters as well as S.C.A. No. 10307 of 1998 were placed together for hearing. However, the said S.C.A. No. 10307 of 1998 was heard by this Court (Coram :- D.A. Mehta, J.) and judgment was kept CAV and hence, all these petitions as well as application were separated and were fixed for hearing before this Court. The hearing of all the petitions as well as application could not be taken place in asmuch as the judgment in S.C.A. No. 10307 of 1998 was awaited. After the pronouncement of judgment in S.C.A. No. 10307 of 1998 on 17.06.2004, all these matters are taken up for hearing on 27.07.2004.

9. Mr. Pavan S. Godiawala, learned advocate appearing with Mr. Mihir Joshi for Kamdar Ladat Samiti has made a request to the Court that the applicant has challenged the order of the learned Single Judge passed in S.C.A. No. 10307 of 1998 in L.P.A. filed before the Division Bench and hence, the hearing may be deferred for some time. The Court was not inclined to accede to the said request of the learned advocate as while disposing of S.C.A. No. 10307 of 1998, the Court has made it very clear that the petitioner has sought similar, if not identical reliefs both in the said Company Application and the present petition and hence, the said petition was not required to be entertained as the relief sought for by the petitioner can be equally available in the proceedings in Company Petition No. 2 of 1998 and Company Application No. 292 of 1998 and other cognate matters. The Court has further observed in the said judgment that the subsequent event which have supervened have admittedly taken place in proceedings of Company Petition No. 2 of 1998 and cognate matters. The said proceedings are alive and hence, there is no question of moulding relief in the said petition on the basis of such subsequent facts to do substantial justice between the parties, because the rejection of the said petition is not going to result in any prejudice to the petitioner. The Court has lastly observed that the Court is required to balance the competing interest and for this purpose the interest of all concerned, viz. the petitioner, the secured creditors, the contesting workmen's unions, shareholders and others will be taken care of more particularly only in proceedings of Company Petition No. 02 of 1998 and cognate matters.

10. In view of the aforesaid observations made by this Court in S.C.A. No. 10307 of 1998, this Court has proceeded to hear all these matters.

11. As far as Company Petition No. 2 of 1998 is concerned, as observed earlier, it is based on the opinion expressed by the BIFR on 31.12.1997. In the said order, the Board has discussed various proposals put forward by the concerned parties and it was observed that the basic feature of proposals was financing major part of the revival caused by sale of land which was subject to State Government's permission under ULC Act. In view of the representations made by all the interested parties, BIFR has directed the Mills Company to deposit Rs. 1 Crore each in interest bearing no lien account with IDBI and to submit that proposal to the Operating Agency within one month. However, none of the proposals have been found acceptable and ultimately, the Board has come to the conclusion that despite having exist all possible avenues it had not been possible to work out any acceptable revival scheme nor the Company could enable it to turn its networth positive within a probable time frame while meeting all the financial obligations and hence, BIFR has confirmed its earlier prima facie opinion that it was just and equitable in public interest if the Mills Company was wound up under Section 20 of the SICA.

12. The above view of the BIFR was confirmed in appeal by the AAIFR vide its order dated 21.07.1998 wherein the Appellate Authority has considered the proposals put forward by the Company as well as Kamdar Ladat Samiti and it was observed that the debt burden of the Mills Company to the Secured Creditors, namely, IDBI, IIBI AND UCO Bank as on 31.03.1997 was about Rs. 5 Crores and they were not willing to make sacrifices. The Appellate Authorities have further observed that according to the Kamdar Ladat Samiti, funds to the extent of Rs. 11.5 Crores would be required for payment of workers' dues and the VRS for surplus workers on account of proposed closure of the processing unit. The requirement of the fund was, therefore, to the tune of over Rs. 15 Crores and as the sale proceeds from the land and machinery of the processing unit would at best be only Rs. 7 to 8 Crores as there was no rehabilitation proposal found acceptable to the financial institutions / bank, it was indeed difficult to hold that worthwhile steps could be pursued further in the matter. The appellate authorities have also negatived the arguments of Kamdar Ladat Samiti to the effect that it would be

possible for them to rehabilitate the Company by utilising the sale proceeds of the land / machinery of processing unit in view of the fact that it would not be possible to meet the demands of the Secured Creditors and workers.

13. When the Board's opinion was forwarded to this Court and Company Petition was registered on that basis, this Court has passed an order on 12.01.1998 taking the view that since the Board has followed the same procedure, it was not necessary for this Court to again follow that very procedure after receiving the opinion of the Board under Section 20 of the Act and, therefore, the Court has passed the winding up order directing the Official Liquidator attached to this Court to take charge of the Company together with all its assets, record, books, machineries, spare-parts, stores,manufactured goods, land and building etc. and all other properties after making necessary inventory in that behalf.

14. The Mills Company has, however, filed M.C.A. No. 07 of 1998 before this Court to seek the review of the order passed in Company Petition No. 2 of 1998 on 12.01.1998 and this Court, vide its detailed order and judgment dated 10.03.1998 has recalled the order dated 12.01.1998, after following the binding decision of the Hon'ble Supreme Court in the case of J.M. Malhotra V/s. Union of India, 89 (1997) COMPANY CASES 600. The Court has thereafter issued Notices to the Company as well as all secured creditors. This Court thereafter, vide its order dated 23.07.1999 has admitted the Company Petition Nos. 2 of 1998 and 65 of 1998 and order of advertisement was passed. While passing the order of admission and advertisement, the Court has also issued certain directions to the Official Liquidator attached to this Court who was appointed as Provisional Liquidator of the Mills Company. The Court has further observed that the grievances ventilated in the petition of the Kamdar Ladat Samiti challenging the correctness and legality of the Board Opinion can well be examined at a later stage when the Court would consider the issue whether the Company should or should not be wound up on the basis of Board opinion. Hence, Kamdar Ladat Samiti has withdrawn S.C.A. No. 10307 of 1998 as well as Company Application No. 292 of 1998 with the liberty to raise all available contentions assailing the correctness of the Board opinion including those raised in the said petition by way of objections at an appropriate stage.

15. It is, however to be noted here that subsequently, by an order dated 21.09.2000, this Court has revived S.C.A. No. 10307 of 1998 and Company Application No. 292 of 1998 by accepting the arguments of the learned advocate appearing for Kamdar Ladat Samiti to the effect that the Samiti is objecting to the legality and validity of the orders passed by BIFR and AAIFR and if the winding up proceedings are not to take proper shape in near future, their petition as well as application are required to be revived so that they can properly raise their grievance before this Court and may also make a prayer to send back the matters to BIFR or AAIFR. With a view to do substantial justice to the litigating parties, the Court has thought it fit to revive the said two matters and directed the office to hear the same along with all other Company Petitions.

16. It is in the above backdrop, all these matters are heard by this Court. The case of Kamdar Ladat Samiti before this Court is that its scheme for revival of the Company by disposal of surplus assets and commencing weaving operations on jobwork basis, has not been properly considered at any stage. It would not be just and equitable to order the winding up of the Company without fully treating all avenues for revival. It is also their submission that the revival scheme is required to be examined by this Court particularly in light of the changed circumstances being the repeal of the ULC Act, which would result in escalation of the price of surplus land proposed to be sold under the scheme, thereby improving its liability as a revival package. It is also their case that the opinion of the BIFR as confirmed by the AAIFR holding that it was just and equitable to order winding up of the respondent Company, does not deserve to be accepted by this Court. The said opinion has been given without adequate consideration of the proposals submitted by the Kamdar Ladat Samiti. The workers were the most vitally affected parties in the event of closure of Mills or in the process of winding up or liquidation of a Company. The salutary provisions of the beneficial legislation, SICA, have been enacted, inter alia, with a view to offer maximum protection of employment. Section 18(2)(f) of the Act contemplates transfer of shares in the sick industrial company even as its intrinsic value to the employees of the sick industrial company with clear intend to encourage the employees to take over the sick units and to vest authority with a power to direct transfer of shares to the employees in this behalf. Despite this categorical legislative intend and

guideline, the scheme of revival proposed by the Kamdar Ladat Samiti has been given an absolute cursory examination and has been discounted without any basis or justification whatsoever.

17. It is also their case that the revival package as proposed by them is workable and would be eminently in the public interest and in the interest of members and it would not be just and equitable to wind up the Company. The proposal contemplates that the new venture would be managed by a workers cooperative society in which the present workers would be members. At least 40% of the 650 workers would be employed in the new venture and the rest would offer voluntary retirement. The coordination Committees would be appointed for co-ordination of pre-operative activities like realisation of fixed assets, shifting of some assets, settlement of dues, legal formalities etc. Similarly, an advisory committee will provide continued guidance and advice in management. Weaving section of the Mills Company would be shifted to the other place at Saraspur, Ahmedabad. Stock of materials, cloth and other movable property at Sobhraj Park would be disposed off for an approximate value of Rs. 3.5 Crore. Land at Sobhraj Park would be sold for Rs. 6 Crore approximately. The total realisation of Rs. 9.5 Crores would be used in repayment of statutory liabilities, liabilities to workers, repayment of term loan, unsecured creditors and shareholders. In this process, financial institutions would forego interest and principal amount; accepting Rs. 3.3 Crore in full settlement. The new venture would adopt an aggressive marketing strategy which would be executed by a marketing professional and would receive active marketing support from members of various committees. According to them, the proposal was eminently workable and deserves acceptance.

18. It is also their case that if the opinion of the BIFR is accepted, it would result in destruction of the only source of livelihood for the hundreds of workers without any hope for compensation. According to them, the principal dues of the secured creditors are not more than Rs. 3 Crores and the sale of assets was likely to fetch about Rs. 7 to 8 Crores which would certainly be used to revive the Mills Company. Looking to the present economic condition and severe recession in the textile business, it is absolutely improbable that the workers would ever get another job. Even in the case of disposal of assets, the dues of the workers rank pari-pasu with

those of the secured creditors and, therefore, the equilibrium of sacrifice is implied. It is, therefore, contended that there was no reason for winding up order being passed solely on account of financial institutions' insisting for their total dues since it would obviously entitle the workers to similarly insist for payment of their outstanding legal dues and since the assets of the Company are admittedly not sufficient to discharge such liability, pro-rata payment would necessarily entail reduction by both the parties. It would, therefore, be eminently rational to accept the proposal of the workers industrial cooperative on the basis of similar sacrifice by both the parties with added benefit of enabling the Mills to revive and run and ensure livelihood of the workers.

19. Mr. R.M. Desai, learned advocate appearing for IDBI has submitted that though the scheme was proposed way back in 1997, the said scheme has still not been sanctioned or implemented. The BIFR as well as AAIFR have not accepted the scheme. The scheme was under active consideration of the Secured Creditors as well as other workers Union. As observed earlier, the revival was proposed by shifting the weaving machinery valued at about Rs. 50 Lakhs to the Saraspur premises. The land and building of Nicole unit and balance machinery was being sold and the sale is already confirmed by this Court for a total consideration of Rs. 8,84,20,711/-. The sale proceeds are proposed to be utilized mainly for part payment of the dues of the secured creditors and workers and to a small extent for the start up expenses (not exceeding Rs. 50 Lakhs) to be incurred in restarting the Mill. This Court has required the IDBI to undertake the exercise for sale of assets of the Company and the IDBI jointly along with representatives of the Secured Creditors (UCO Bank and IIBI), Official Liquidator and also representative of the Union of workers had invited offers for sale of the properties, namely immovable property and movable properties. The IDBI also invited offers for sale of the plant and machinery, which are not required for the purpose of implementation of the scheme as proposed by Kamdar Ladat Samiti and the building at Nicole Unit. The offers were received by IDBI and the same was submitted to this Court for approval. This Court vide its order dated 08.02.2002 passed in Company Application No. 22 of 2002 was pleased to accept the offer of Shree Charbhujaji Scrap Trading Company for sale of building of Nicole unit and plant and machinery at Rs. 70,21,111/- (Excluding plant and machinery, which were belonging to private parties and

the machinery as identified by Kamdar Ladat Samiti, which are not to be sold as being required for the purpose of implementation of the Scheme). He has further submitted that the workers proposed to revive the unit and they proposed to re-employ themselves after arriving at a ratio as per the provisions of Section 529 of the Act, Secured Creditors initially have agreed to pay 50% of the sales realisation to the workers as a special case in view of the scheme framed by Kamdar Ladat Samiti. However, it is clearly understood that Secured Creditors would not have any responsibility for running the affairs of the Company. It was also made clear that on the plant and machinery which will be utilised by the Kamdar Ladat Samiti and/or Co-operative Society formed by Kamdar Ladat Samiti, the charge of the secured creditors will continue on the said plant and machinery. If the scheme fails and if in the opinion of IDBI, the scheme is not working, it will be open to IDBI along with IIBI and UCO Bank to proceed for sale of the hypothecated assets and the sale proceeds be distributed between the secured creditors and workers on paripassu basis for which Kamdar Ladat Samiti shall not have any objection.

20. Mr. Desai has further submitted that despite the fact that the scheme is pending for quite a long time before this Court, the Kamdar Ladat Samiti has not done anything further in the matter. The Secured Creditors are, therefore, not interested in lending any support to such a scheme and hence this Court should pass a final winding up order in the case of the Company.

21. Mr. D.S. Vasavada, learned advocate appearing for the Union, namely, Ahmedabad Silk Employees' Union has also opposed the said Scheme. In their reply, it was submitted that the workers have not accepted the scheme. Nanikram Sobhraj Mills Limited was employing 503 workers whereas the processing division at Nicole was employing 8 workers. The other allied units, namely, Modern Silk, Ground Silk Factory and Sovirana Textile, are all opposing the said scheme. About 95 workmen have expired and 240 workmen have given in writing that they are opposing the scheme and, therefore, the scheme need not be sanctioned by this Court. The Scheme was proposed without following statutory provisions contained in Section 391 and 394 of the Companies Act, 1956. Mr. R.D. Dave, the learned advocate appearing for General Workers Union has also opposed the Scheme and pressed for winding up order.

22. The Official Liquidator has filed his report in Company Application No. 292 of 1998 wherein he has pointed out that as per the procedure prescribed under the Companies (Court) Rules, 1959 and Sections 391 to 394 of the Companies Act, 1956, it will be necessary for the sponsors of the Scheme to enter into specific terms of compromise and arrangement between the Company and its shareholders, employees, secured creditors, unsecured creditors and others and the proposed scheme shall be required to be approved by them with a requisite majority, in their separate meetings to be ordered, called and held under the chairmanship of somebody to be appointed for the purpose by this Court and if such a scheme is approved by this Court, it would have a binding effect on all concerned parties including dissenting parties. Under Chapter V of the scheme below the heading "Frame work of the proposal" in sub-para 1, it is provided that NSML should be owned and managed by a workers Co-operative Society and the day to day operations of the Company should be handled by the Society. This is contrary to the Provisions of the Companies Act, 1956 which deals with the "Management" of the Company. In case the Company is revived, the powers to appoint Directors of the Company for management of its affairs and day to day functions, shall rest with the shareholders of the Company. Precisely, for this reason, it is not possible to transfer the ownership of the Company to the workers or any Society and to hand over the management to them.

23. The other petitioning Creditors, namely, M/s. Uttara Achyut Chinubhai & Others in Company Petition No. 65 of 1998, through their advocate, Mr. A.R. Majmudar and/or Ms. Desai, M/s. Jaybharat Credit Ltd. in Company Petition No. 210 of 1998, through their advocate Shri Ashwin L. Shah and Keshoram Rayon in Company Petition No. 09 of 1999, through their advocate Shri A.C. Gandhi have also opposed the revival scheme proposed by the Kamdar Ladat Samiti and pressed for the final winding up order.

24. After having heard the learned advocates appearing for the respective parties and after having gone through their pleadings and orders passed by this Court from time to time in different proceedings in relation to the Company, the Court is of the view that there is no chance for revival of the Company and though the BIFR's opinion is not binding on this Court, the

Court is in full agreement with the said opinion. The Scheme proposed by the Kamdar Ladat Samiti is not in accordance with the statutory Provisions and even if it is to be judged on its face value, it does not generate any confidence with regard to its viability and workability. The scheme is opposed not only by the Secured Creditors but it is opposed even by the Workers. The Scheme is pending before the Court for about six years and yet no sincere efforts appear to have been made by the Kamdar Ladat Samiti for getting it sanctioned by this Court. The Samiti expects Secured Creditors to sacrifice for which they are not ready. No scheme can be framed and sanctioned and even if it is framed and sanctioned, it can run smoothly on the basis of sale of the assets of the Company and/or without bringing any new funds. It appears to the Court that even Samiti has lost all its interest in the Scheme and except to keep the matter pending and not to allow the Court to pass winding up order, it has not done anything in the matter.

24-A. Taking over all view of the matter and considering the entire facts and circumstances of the case, this Court hereby rejects the Scheme proposed by the Samiti and passes the order of winding up of the respondent Company in Company Petition No. 02 of 1998. Since the Official Liquidator attached to this Court is already appointed as the Provisional Liquidator of the Company, he will now act as a Liquidator of the Company and exercise all the powers of the Liquidator conferred under the Provisions of the Act. This petition i.e. Company Petition No. 02 of 1998 is accordingly allowed without any order as to costs.

25. Since the Company Petition No. 02 of 1998 is allowed and final winding up order is passed today, Company Application No. 292 of 1998 is hereby rejected and Company Petition Nos. 65 of 1998, 210 of 1998 and 09 of 1999 are also deemed to have been allowed and winding up order is also deemed to have been passed in all these petitions today.

[K.A. PUJ, J.]

#Savariya#

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